

MINUTES
MICHIGAN STATE TRANSPORTATION COMMISSION MEETING
May 26, 2005
Lansing, Michigan

Meeting noticed in accordance with Open Meetings Act, Public Act 267 of 1976.

Present: Ted Wahby, Chairman
 Linda Miller Atkinson, Vice Chairwoman
 Robert Bender, Commissioner
 Maureen Miller Brosnan, Commissioner
 Vincent J. Brennan, Commissioner
 James R. Rosendall, Commissioner

Also Present: Gloria J. Jeff, Director
 Kirk Steudle, Chief Deputy Director
 Leon Hank, Chief Administrative Officer
 Frank E. Kelley, Commission Advisor
 Marneta Griffin, Executive Assistant
 Jerry Jones, Commission Auditor
 Ray Howd, First Assistant Attorney General, Transportation Division
 John Friend, Bureau Director, Highway Delivery
 John Polasek, Bureau Director, Highway Development
 Myron Frierson, Bureau Director, Finance and Administration
 Susan Mortel, Bureau Director, Transportation Planning
 Tim Hoeffner, Administrator, Intermodal Policy
 Ron DeCook, Director, Office of Governmental Affairs
 Ben Kohrman, Director, Office of Communications
 Rob Abent, Bureau Director, Multi-Modal Transportation

A list of those people who attended the meeting is attached to the official minutes.

Chairman Wahby called the meeting to order at 9:06 a.m. in the Bureau of Aeronautics Auditorium in Lansing, Michigan.

I. COMMISSION BUSINESS

Commission Minutes

Chairman entertained a motion for approval of the minutes of the State Transportation Commission meeting of April 28, 2005.

Moved by Commissioner Brosnan, with support from Commissioner Bender, to approve the minutes of the Commission meeting of April 28, 2005. MOTION CARRIED.

II. **DIRECTOR'S REPORT – DIRECTOR GLORIA J. JEFF**

Director Jeff presented John Friend with the 2005 Safety Leadership Award which was awarded to MDOT from AASHTO.

Mr. Friend thanked everyone and stated that Michigan has always been at the forefront of safety. We need to continue to focus on fatality reduction; this is a national goal. There are three things people really needed to do: 1) don't drink and drive, 2) buckle up and, 3) watch the intersections where people are running the four-way stops or not following the yield signs.

Director Jeff reported that in partnering with the History, Art and Libraries on fundraising activities for the Centennial, this quarters issue is focused exclusively on MDOT. This was done at no cost to taxpayers.

Director Jeff's presentation focused on:

Detroit River International Crossing

This is a partnership between Michigan/Ontario (FHWA, Transport Canada, MDOT, Ontario Ministry of Transportation). These agencies are involved because of the unique approach in terms of bringing all the parties together to expedite the time, and to assure that all aspects of the project are looked at simultaneously.

There is an array of proposals being put together by the private sector, which are not what is being analyzed as part of this International Border Study. The proposal includes the Hennepin Point Crossing, Detroit-Windsor Truck Ferry, Mich-Can Proposal, AMB ETR, Twin AMB, and the Detroit River Tunnel Project.

The purpose of our study (completed in January 2004) was to look at the need to have a legitimate strategy in place for the next thirty years at the U.S.-Canada border crossing in the Detroit-Windsor area. It needs to be consistent with environmental assessment requirements (Canadian Environmental Assessment Act, Ontario Environmental Assessment Act, U.S. National Environmental Policy Act).

The current study that is underway would coordinate the U.S. and Canadian work programs, investigate the engineering, social, economic, cultural and natural environment attributes of route and crossing alternatives, publicly present the assessment of direct and indirect impacts of the alternatives for public review, and incorporate public and agency input in decision-making and development of mitigation.

The stage we are at presently involves approving a location for a river crossing, approved connections to freeways in the U.S. and Canada, approved locations for plazas in the U.S. and Canada, putting together a comprehensive engineering report to support approvals of FEIS, which includes property acquisition, design and construction, and submission for approval by December 2007 to FHWA.

Public involvement will include a Local Advisory Council, Public Agency Group, Private Proponents Group, public meetings, project web site media contact, and a toll free hotline.

A preliminary Statement of Project Purpose states "Provide safe, efficient and secure movement of people and goods across the Canadian-U.S. border in the Detroit river area to support the economies of Michigan, Ontario, Canada and the U.S., and support the mobility needs of national and civil defense".

A preliminary Statement of Project Need states "Provide new border crossing capacity to meet increased long-term demand; improve system connectivity to enhance the seamless flow of people and goods; improve operations and processing capability; and, provide reasonable and secure crossing options in the event of incidents, maintenance, congestion or other disruptions. It should be noted that the events of September 11, 2001 significantly impacted the crossings.

Context Sensitive Solutions Policy

Executive Directive

MDOT shall develop policies and procedures to expand the use of Context Sensitive Solutions (CSS) , invite stakeholder participation, address safety, mobility, liability, the environment, and other issues.

Over 60 organizations assisted in policy development, stakeholders came from the environmental community, planning associations, local governments, the transportation industry, and other state agencies.

We have attempted to bring forward a balanced policy—one that promotes partnerships, recognizes community values and environmental stewardship, encourages integrated transportation solutions, and promotes design flexibility while preserving safety and mobility.

The policy was presented to the Commission for information at the March meeting. Only one revision was requested to the policy since the March presentation. This change provides for reporting to the Commission six months after the policy is adopted, and annually thereafter.

Director Jeff asked for approval of this policy pending any questions.

Commissioner Atkinson asked where local governments were included (where they fit) in the policy other than in the group of stakeholders.

Director Jeff answered the "local governments" will clearly be partners as well; this is a language issue that can be corrected.

Commissioner Atkinson asked Director Jeff if she foresees CSS proposals being ones where local governments are active partners.

Director Jeff answered yes; in all instances.

Commissioner Atkinson further asked which of these procedures and guidelines within the policy, as it presently exists, would suggest this.

Director Jeff deferred to Mark Van Port Fleet.

Mr. Van Port Fleet stated that there are several aspects where the local agencies are intended to be partners—1) the local agencies themselves are stakeholders in projects, especially that the Department produced; 2) partnership committees similar to how MDOT works with the contracting industry.

Commissioner Atkinson wanted, for the purposes of this policy, a distinction made between the word “agency” and “government”.

Director Jeff assured Commissioner Atkinson that we would take that as a amendment and will add it as “the Commission takes an attitude to explicitly include “local governments”.

Commissioner Atkinson inquired (under “MDOT will develop...”) about paragraph #2 ...flexibility with state and federal design standards... She asked if this particular policy should indicate that we may, in fact, exceed standards in places where we can increase safety **and** context sensitive solutions design by going beyond a minimal threshold.

Director Jeff stated that it is the intent of the department to indeed find flexibility to assure the protection of health and safety, and at the same time achieve solutions that reflect the unique nature of the community in terms of what it sees itself as or what it would like to become. Director Jeff then asked Commissioner Atkinson what language changes she proposes.

Commissioner Atkinson suggested adding the words “and beyond” after the word “within” would more accurately reflect the Department’s intent.

Director Jeff deferred to Ray Howd of the Assistant Attorney General’s office for advice regarding any legal ramifications for using this terminology if it is interpreted that what we have to do in **all** instances is exceed standards.

Mr. Howd stated that it could be some issues with what federal funding would permit.

Director Jeff asked Commissioner Atkinson if we could work on the language during the six months that the Department has before they come back before the Commission.

Chairman Wahby entertained a motion to approve the Context Sensitive Solutions Policy with the language in paragraph #1 changed to read“Promote partnerships with **local governments**, state agencies, ...”. This approval also includes a commitment on the part of the Department to return with their six month report with any additional modifications to the language addressed. Motion was made by Commissioner Atkinson and supported

by Commissioner Brennan to approve the policy. Mr. Kelley called the roll: all answers were affirmative. Motion carried on a unanimous roll call vote.

Reauthorization

Both the House and Senate have passed a version of Reauthorization. The Senate version is approximately \$296 billion over five years; House version is at \$284 billion over that same time period. There are several details within both programs that are of concern. The next step will be a Conference Committee being appointed. Director Jeff anticipates key members from the Michigan Congressional delegation being a part of this Committee. In all probability the work in the Conference Committee will not be completed by the end of the month which is when the current extension expires. We anticipate that they will give us an additional extension—hopefully for no longer than thirty days.

Chairman Wahby asked if anyone had questions for Director Jeff; none were forthcoming.

III. **POLICY – DIRECTOR GLORIA J. JEFF**

This was covered during the Director's report above.

IV. **RESOLUTIONS**

Resolution Authorizing the Notice of Revision of a Project List, Series 2002B - Myron Frierson

This resolution allows for amendment to the project list for CTF. The reprogramming of the project list is in order to provide additional funds to match government monies for bus and transit type capital expenditures.

Mr. Frierson asked for questions and approval of this resolution.

Commissioner Brosnan asked if this form of request comes before the Commission on a regular basis.

Mr. Frierson responded that resolutions of this nature will come back before the Commission periodically asking the Commission to reprogram project lists.

Commissioner Rosendall stated that a large portion of the money is being pulled away from the rail projects. Commissioner Rosendall asked if this money would be put back for new projects and improvements.

Mr. Frierson deferred to Rob Abent for response.

Mr. Abent stated that reprogramming does not cancel any projects that are currently planned. This configuration better fits existing and future, potential projects.

Commissioner Rosendall again asked, for clarification, if the money would be put back into the rail system.

Mr. Abent stated not necessarily. As projects come, are planned, or become mandated, then that could happen. This time, however, there is no commitment for the funds.

Chairman Wahby entertained a motion to approve the Resolution to Authorize the Notice of Revision of a Project List, Series 2002B. Motion was made by Commissioner Bender and supported by Commissioner Brosnan to approve the resolution. Mr. Kelley called the roll: all answers were affirmative. Motion carried on a unanimous roll call vote.

Resolution Authorizing the Notice of Revision of a Project List, Series 2003 - Myron Frierson

This resolution allows for amendment to the project list for CTF. The reprogramming of the project list is in order to provide additional funds to match government monies for bus and transit type capital expenditures.

Mr. Frierson asked for questions and approval of this resolution.

No questions were forthcoming.

Chairman Wahby entertained a motion to approve the Resolution to Authorize the Notice of Revision of a Project List, Series 2003. Motion was made by Commissioner Brosnan and supported by Commissioner Bender to approve the resolution. Mr. Kelley called the roll: all answers were affirmative. Motion carried on a unanimous roll call vote.

V. **OVERSIGHT**

Commission/State Administrative Board Contracts/Agreements (Exhibit A) – Myron Frierson

Mr. Frierson reported that 23 projects and agreements.

Mr. Frierson asked for questions and approval.

Commissioner Brosnan inquired about Item #2 (Contract 2005-0200: Uninterrupted Lighting Maintenance and Safety Services—Harlan Electric) asking if the \$2 million has been paid or are they waiting for \$2 million.

Mr. Frierson stated that they are waiting to be paid.

Commissioner Brosnan asked if they have been waiting since 2003.

Mr. Frierson stated that in order to make the final payment Commission approval is needed.

Commissioner Brosnan asked, regarding the contract they are retroactively approving (which went until 3/31/05), if the Department has since negotiated on a bid for another contract.

Mr. Frierson answered yes; that contract was let earlier this spring for a three year term.

Commissioner Brosnan asked if this contract was a competitive bid or invitation only.

Mr. Frierson answered that it was a competitive bid.

Commissioner Rosendall asked if this went to the same contractor.

Mr. Frierson answered yes.

Commissioner Rosendall then asked if the issue that caused us to get in the situation has been taken care of.

Mr. Frierson answered yes.

Commissioner Brosnan inquired on Item #9 (Contract 2005-5219: Cost Participation for Local Agency Construction Contract) as to why the City of Dearborn has not paid the Department the \$500,000 that is owed.

Mr. Frierson responded that the issue associated with this contract deals with ACT 51 participation. ACT 51 requires local agencies to participate in the cost of reconstruction of roads and trunklines in their communities, if they are of a particular size. City of Dearborn and MDOT are in discussions over the extent of their obligation under ACT 51. Until those discussions have concluded, that invoice will be on the books.

Commissioner Brosnan asked if there was any reason to believe that the City of Dearborn would not honor their commitment.

Mr. Frierson reiterated that discussions are ongoing.

Director Jeff interjected that there are an array of options available to us.

No other questions were forthcoming.

Mr. Frierson asked for approval of Exhibit A.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brennan and supported by Commissioner Brosnan to approve Exhibit A. Motion carried on a unanimous voice vote.

Bid Letting Pre-Approvals (Exhibit A-1) – Myron Frierson

Mr. Frierson gave a brief re-cap of the June 3rd letting bid letting activities; several major state projects at an estimated value of \$43 million; several of those projects have project warranties. The overall June letting will be \$83 million.

Mr. Frierson asked for questions and approval of the bid items for the June letting in Exhibit A-1.

Chairman Wahby entertained a motion. Motion was made by Commissioner Bender and

supported by Commissioner Atkinson to approve the June bid letting. Motion carried on a unanimous voice vote.

Letting Exceptions Agenda (Exhibit A-2) – John Polasek

Mr. Polasek reported on six projects; one trunkline and five local agency projects in excess of 10% over the estimate.

Mr. Polasek asked for questions and approval of Exhibit A-2; no questions were forthcoming.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brennan and supported by Commissioner Rosendall to approve Exhibit A-2. Motion carried on a unanimous voice vote.

Supplemental to Letting Exceptions Agenda (Exhibit A-2) – John Polasek

Mr. Polasek stated that this supplemental project was one of the five local agency projects mentioned above; this came in late.

Mr. Polasek asked for questions and approval of Supplemental to Exhibit A-2; no questions were forthcoming.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Bender to approve the Supplemental to Exhibit A-2. Motion carried on a unanimous voice vote.

Information Items (Exhibit A-3) – Myron Frierson

Mr. Frierson reported that these exhibit items are for information only.

This item had a single bidder with the actual bid being below the engineers' estimate. There is no action required.

Chairman Wahby asked for questions; none were forthcoming.

Contract Adjustments (Exhibit B) – John Friend

Mr. Friend handed the Commissioners a chart which shows final MDOT contract variation percents.

Mr. Friend also informed the Commission that Extra #2005-63 (local project; Job #19555-55960A) is withdrawn. Nine remaining MDOT projects; six are extras, three are overruns. Corrections to be made are:

Item 2005-62 (Job #82071-58218A); last paragraph of the write-up, lines 8-9... "failures were related to the original design"... The original design referred to is the design performed many years ago; not the design they are working from during this actual construction project.

Item 2005-64 (Job #82022-45686A); additions were stated as \$487,000, but should have been \$465,000.

Mr. Friend asked for questions and approval of Exhibit B, excluding Extra #2005-63.

Commissioner Atkinson asked, regarding the accounting layout of Item 2005-64, where the "Total of Negative Adjustments (Approved to Date)" shows zero, is this offset, between \$487,000 and \$465,000, reflected.

Mr. Friend stated that it is shown on page 3, paragraph #5 (\$22,066.50).

Commissioner Brennan asked, regarding the summary for April 28th, where the "original contract price" is one amount, but over time is expanded to a greater amount, does it make sense to possibly go over some of these to determine the cause.

Director Jeff interjected that when we are preparing the engineers' estimates and are actually out in the field doing the work, looking at the totality of the program, there won't be a pattern because those things that regularly occur have already been managed and identified ways to not have those become recurring cost overruns or extras.

Mr. Friend responded to the accuracy of the Director's response.

Commissioner Rosendall asked how much sub-surface radar mapping was done prior to going out on a project.

Mr. Friend responded that the department has tried this, however the department feels that the technology and results are not as accurate as they would like it.

Director Jeff further stated that the total project cost is not reduced by doing it; it simply means you have spent money up front instead of at the back end.

No other questions were forthcoming.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brennan and supported by Commissioner Bender to approve Exhibit B, excluding Extra #2005-63. Motion carried on a unanimous voice vote.

VI. **PUBLIC COMMENTS**

Chairman Wahby asked if anyone wanted to address the Commission.

Mr. Bob Kohl of Harlan Electric stated that his company has not been paid in over a year. Mr. Kohl asked when his company can expect to be paid.

Director Jeff stated that a check would not be cut today; however deferred to Mr. Frierson for further information.

Mr. Frierson stated that the State Ad Board meets on June 7th and a check should be issued shortly after that.

Chairman Wahby asked for clarification on the payment process in order to understand why this pay out has taken so long.

Director Jeff answered that we were trying two or three different ways to more rapidly get payment to the company, however we ran into some issues with both Commission Audit and the Attorney General, and we are not able to get through those.

Chairman Wahby asked Mr. Frierson to explain what happens when there is a dispute (without using this issue).

Mr. Frierson stated that negotiations are conducted to try and reach an agreement. Once an agreement is met regarding the language and dollar amount, this is brought before the Commission and then the State Ad Board.

Chairman Wahby asked who sits on the Ad Board.

Mr. Frierson stated that there are representatives from the Lt. Governor's office, Governor's office, Treasurer's office, MDOT, Superintendent of Schools, Secretary of State office, and they meet every two weeks.

Chairman Wahby stated that this is a problem that comes up often.

Director Jeff stated that the department is sensitive to this concern.

Chairman Wahby asked for any further public comments; none were forthcoming.

Chairman Wahby asked for comments from the Commission; none were forthcoming.

ADJOURNMENT

There being no further business to come before the Commission, the Chairman declared the meeting adjourned at 10:24 a.m.

After a short break there will be a workshop will be held regarding Finance and Bonding.

The next full meeting of the Michigan State Transportation Commission will be held in Lansing, Michigan on June 30, 2005, commencing at the hour of 9:00 a.m.

The July 28, 2005 meeting of the Michigan State Transportation Commission will be held in Muskegon, Michigan; City Hall Building, 1st Floor Commission Chambers, 933 Terrace Street, commencing at the hour of 9:00 a.m.